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EXAMINER

BOGART, MICHAEL G

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3761

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/777,251
Filing Date: February 12, 2004
Appellant(s): KROPF ET AL.

Timothy J. Zarley
For Appellant

EXAMINER'S ANSWER

Art Unit: 3761

This is in response to the appeal brief filed 27 March 2006 appealing from the Office action mailed 10 January 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ives US 6,454,748 B1).

Regarding claim 1, Ives teaches a disposable diaper (10) comprising:

a diaper body (26) having an outer surface (28, 30);

a first layer (14) secured to the diaper body (26);

a second layer (44) having an interior surface (facing toward diaper body (26))

secured to the diaper body (26) to form a pocket between the first and second layer (14, 44); and

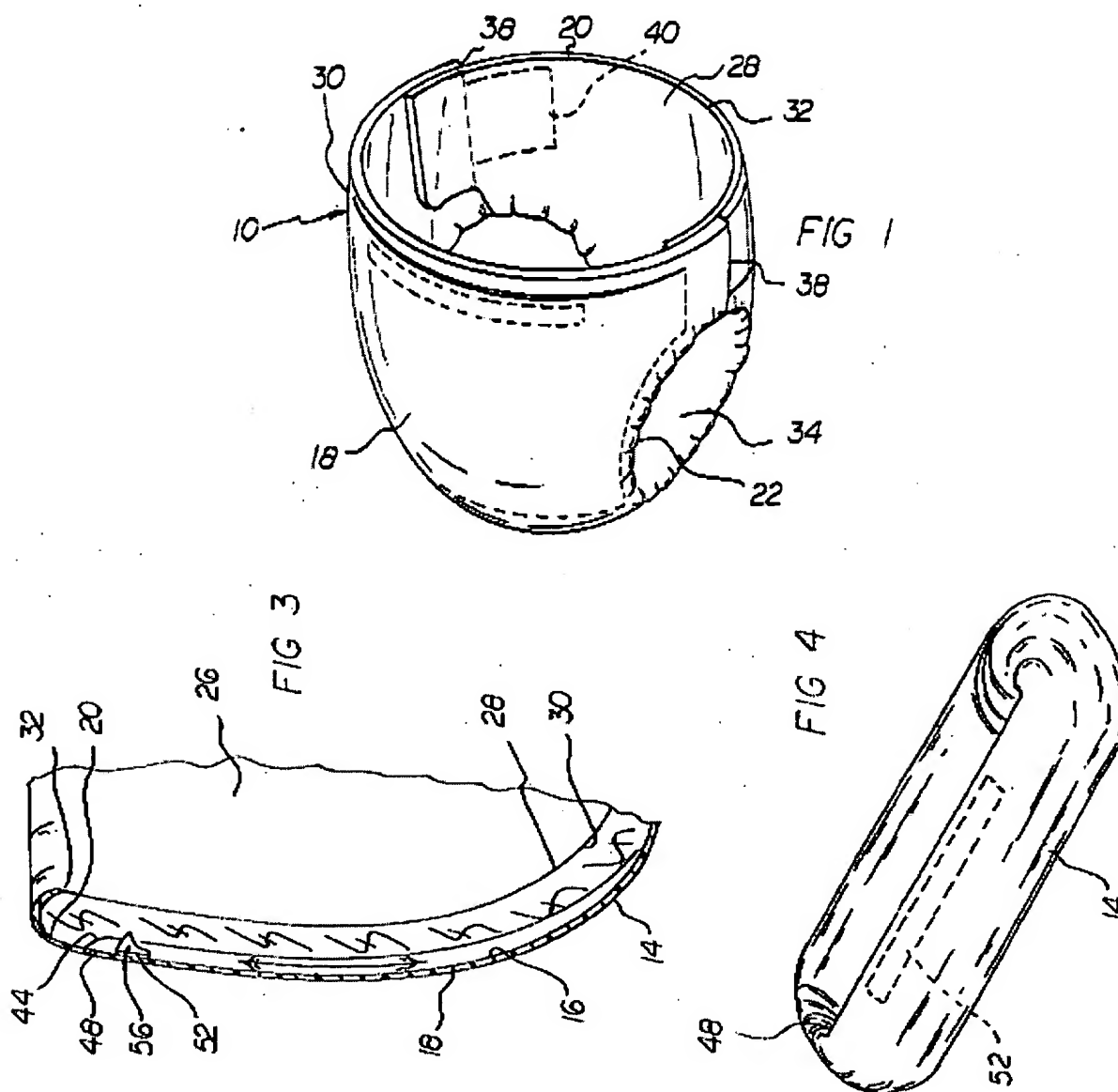
a means (52) for sealing the pocket for containing waste and odor on an exterior surface (facing away from diaper body (26)) of the second layer (44)(see figure 3, supra)(col. 4; lines 25-33). (see figures 1, 3, and 4, infra).

Regarding claim 2, Ives teaches that the first layer (14) and the second layer (44) are waterproof (column 4, lines 8-13; column 4, lines 25-33).

Regarding claim 3, Ives teaches that the sealing means (52) is tape strip attached to a first surface of the second layer (14)(column 4, lines 39-48).

Regarding claim 4, Ives teaches that the tape strip has a releasable protective facing (56).

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Regarding claim 5, Ives teaches that the sealing means (52) is an interlocking closure (e.g., Velcro®)(column 4, lines 39-48).

Regarding claim 6, Ives teaches a method for disposing of a diaper (10), comprising the steps of:

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providing a diaper body (26) having an outer surface pocket (48) formed on the outer surface of the diaper body (26);

rolling the diaper body (26) inwardly toward the pocket (48);

inverting the pocket (48) to receive the diaper body (26); and

sealing the pocket (48) to enclose the diaper body (26) to form an air tight seal (Ziploc® strip)(column 1, line 55-column 2, line 29; column 4, lines 61-67)(figure 4, supra).

Regarding claim 7, Ives teaches a disposable diaper (10) comprising:

a diaper body (26) having an outer surface (44);

a layer (14) secured to the diaper body (26) to form a pocket (48) between the layer (14) and the outer surface (44); and

a means (52) for sealing the pocket (48) for containing waste and odor such that when the pocket is inverted the means for sealing forms an airtight seal (column 4, lines 61-67)(figure 4).

Regarding claim 8, Ives teaches that the layer (14) is waterproof (column 4, lines 8-13).

Regarding claim 10, Ives teaches that the tape strip (52) has a releasable protective facing (56).

Regarding claim 11, Ives teaches that the sealing means (52) is an interlocking closure attached (column 4, lines 39-48).

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ives.

Ives does not expressly teach that the tape fastener forms an airtight seal.

Ives does teach an embodiment where the seal is in the form of a tape strip (column 4, lines 39-48). Ives teaches an alternative embodiment which uses a Ziploc® type seal which is airtight and serves to prevent odor leakage (column 4, lines 61-67).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to make the tape seal strip as airtight and odor proof as possible as suggested by the reference at column 4, lines 61-64). The use of a tape strip to achieve this is desirable as it greatly reduces the cost relative to a Ziploc® style closure.

(10) Response to Argument

Applicant's arguments filed 27 March 2006 have been fully considered but they are not persuasive.

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Regarding claim 1, Applicants assert that Ives does not teach a second layer having an interior surface secured to the diaper body. Applicants state that Ives teaches a layer (14) that has an interior surface that is secured to the diaper (10) and additionally has a strip (52) of adhesive on that same interior surface. This argument is not persuasive because, as described in detail *supra*, Ives teaches:

- a diaper body (26) having an outer surface (28, 30);
- a first layer (14) secured to the diaper body (26);
- a second layer (44) having an interior surface (facing toward diaper body (26)) secured to the diaper body (26) to form a pocket between the first and second layer (14, 44); and
- a means (52) for sealing the pocket for containing waste and odor on an exterior surface (facing away from diaper body (26)) of the second layer (44)(see figure 3, *supra*)(col. 4, lines 25-33).

The sealing means (52) can be reasonably construed as being on the outer surface of the second layer (44) as it lies against that surface via intermediate peel strip (56) which prevents sealing (52) means from prematurely adhering to the second layer (44)(see fig. 3). Although applicants' interpretation of the claims and applied reference may be reasonable, it does not preclude the interpretation as applied herein. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification."

Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). MPEP § 2111.

Regarding claims 1, 6, and 7, applicants assert that Ives does not teach containment of odor or an air tight seal. This argument is not persuasive because Ives provides the seal (52) in order to roll up the diaper after soiling and to seal it with its own pocket so as to prevent odors from escaping the soiled diaper (col. 4, lines 39-67). The use of a Ziplock ® or an adhesive strip in this manner as taught by Ives would at least be substantially airtight (col. 4, lines 61-67).

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Applicants assert that Ives does not teach inverting the diaper as opposed to rolling into itself. This argument is not persuasive because as interpreted herein, at least one of the generally recognized definitions of "invert" is "to turn inward". Applicants have not defined "invert" in their specification in a manner that is inconsistent with this interpretation. Additionally, the Ziplock ® style seal would be airtight along virtually its entire length once it is rolled up in the manner shown in figure 4.

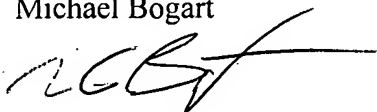
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Bogart



Conferees:

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SUPERVISORY PRIMARY EXAMINER



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